

Small Business Regulatory Fairness Board (SBRFB)

ANNUAL REPORT 2015

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December 28, 2015

The Honorable Jeremiah W. "Jay" Nixon
Governor of the State of Missouri

The Honorable Ron Richard
President Pro Tem of the Missouri Senate

The Honorable Todd Richardson
Speaker of the Missouri House of Representatives

Dear Governor Nixon, President Pro Tem Richard and Speaker Richardson:

To be bluntly honest, during the first half of Fiscal Year 2015 and the prior 18 months, the Missouri Small Business Regulatory Fairness Board (SBRFB) has been operating on a sub-par level. Leadership and support issues resulted in very little activity, and though some meetings and actions took place, no required annual reporting was done for FY2013 and FY2014. We are happy to report that, while some issues remain, the SBRFB has new leadership and new members that are pledged to engage in our mission.

The SBRFB is the only state board that is focused solely on small business. During our early years, SBRFB made significant progress in working interactively with agencies to ensure the small business perspective is addressed as new rules are made and regulations are enforced. Small business owners had relied on us to address urgent and difficult issues, both large and small. It is time to get back to where they can do so again.

Everyone acknowledges that small businesses remain the engine of the economy with two out of three new jobs created by small businesses. SBRFB is uniquely placed to help identify those regulations that restrict job growth in Missouri. Since its inception, SBRFB has reviewed many hundreds of regulations, acted upon dozens, and have made a difference for many small businesses to be competitive in the marketplace.

One issue remains paramount. The SBRFB members are small business people busy running their businesses. Since inception, the SBRFB lacked adequate administrative support so that the Board can function in the way it was intended when it was created by the legislature. Over the past three years, what little support we had, has been reduced even further. We are pleased that the Governor and Legislature saw fit to authorize 1.5 FTE to provide this much needed support, and we now await adequate funding of this new staff.

In fulfilling its duties outlined in 536.310 RSMo, the SBRFB shall provide an evaluation report to the governor and the general assembly. Please accept the attached such report and evaluation.

Best Regards,

The Small Business Regulatory Board

SBRFB MEMBERS

Nancy Zurbuchen, Chair - Elected by the Board, Motional Multimedia, Wildwood, MO (Appointed by Senate Majority)

Scott George, Vice Chair - Elected by the Board, Mid-America Dental & Hearing Center, Mt. Vernon, MO (Appointed by House Majority)

William Jenks, Jenks/Long Insurance, Rolla, MO (Gubernatorial Appointment, Public Member 2)

Jim Seigfreid, Retired Small Business Owner, Warrensburg, MO (Gubernatorial Appointment, Public Member 4)

Rep. Alan Green, Missouri House of Representatives, Florissant, MO (Appointed by House Minority)

Sheila Forrest, Afro World Hair and Fashion Company, St. Louis, MO (Appointment by Statute, (Minority Business Advocacy Commission Chair)

(Gubernatorial Appointment, Public Member 1)
VACANT

(Gubernatorial Appointment, Public Member 3)
VACANT

(Appointed by Senate Minority)
VACANT

BACKGROUND

The Missouri Small Business Regulatory Fairness Board (SBRFB) was established by the Missouri General Assembly under HB 576 and SB 456; and, patterned after the United States Small Business Administration, Office of Advocacy, and National Ombudsman which serve as voices for small businesses in the Federal Government.

The legislation is comprised of several key elements:

- 1) State agencies take into account small businesses when promulgating new rules;
- 2) State agencies take into account small businesses when enforcing new rules and regulations;
- 3) State Agencies take into account small businesses when reviewing existing rules to see if they are still needed;
- 4) Established the Small Business Regulatory Fairness Board;
- 5) Granted judicial review to small businesses; and
- 6) Defined small businesses as a for-profit enterprise with 100 or fewer full-time or part-time employees.

The Missouri Department of Economic Development, in accordance with HB 576 and SB 456, provides staffing and support for the SBRFB Commission.

Board Responsibilities

HB 576 and SB 456 states three main responsibilities for the board:

- 1) Provide state agencies with input regarding rules that adversely affect small businesses;
- 2) Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency; and
- 3) Provide an evaluation report to the governor and the general assembly, including any recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the board for consideration.

SBRFB MEETINGS IN FY2015

Three meetings were held in FY2015 by the Board on the following dates and at the following locations:

March 24, 2015 via conference call

May 5, 2015 at 301 W High Street, Room 490, Jefferson City, MO

May 26, 2015 via conference call

PERIODIC REVIEW

New for 2015 is the Periodic Review. The plan is on a 5-year rolling schedule, each year requiring a specific group of agencies to perform the review. The first group includes all regulations in Administration, Agriculture, Conservation, Economic Development, Elementary and Secondary Education, and Higher Education.

- SBRRB began planning for our response to the Review questions. We are starting to develop internal processes for this purpose.
- This process for rule review supersedes the bi-annual periodic review process that used to be part of the SBRFB oversight.
- The Board members did outreach to small businesses and business associations to spread the word about what the periodic review, and how to provide comment. The outreach document we created appears in **Appendix A**.

AGENCY TRAINING MATERIALS

Updating the agency training materials has begun for the existing program. In addition, we have identified another area for which training materials were never created, so this will be developed in 2016. This area has to do with enforcement of rules and regulations by the agencies as it relates to small businesses.

REGULATORY ALERTS SUBSCRIPTION

Without notice to this board, the state cancelled the contract with a vendor that we had relied on for this notification service. This had a huge negative affect on the work of the board due to the fact we had no useful notification process for the last 2+years.

Solution: Starting development in FY2015, the SBRFB now uses a new notification service to notify board members and any other subscribers when the board receives new proposed rules. When the board receives new proposed rules, DED staff work with IT staff to upload the proposed rule, fiscal note, and small business impact statement to the SBRFB website. This triggers the notification service GovDelivery to notify the page administrator (Kristin) that the page was updated and allows the page administrator to send an email to all subscribers that there is new content on the SBRFB page.

To subscribe, go to <https://www.sbrfb.ded.mo.gov/> and click on 'Regulatory Alerts,' then click on 'Subscribe to Regulatory Alerts.' Indicate those agencies you wish to follow. Proposed rules notifications contain easy-to-click links to enable subscribers to review a new proposed rule.

SMALL BUSINESS COMMENTS

This testimony initially started in FY2013, but it had not yet been published as part of a prior annual report.

Karen Werner

Karen Werner, owner and operator of two Child Care Centers in Jefferson City, contacted SBRFB because she believed the Department of Health and Senior Services (DHSS) was unfairly requiring child care providers to use an electronic tracking system.

SBRFB Response: The SBRFB contacted the liaison from DHSS requesting they provide more information to Ms. Werner and the SBRFB.

State Agency Response: DHSS responded to SBRFB and Ms. Werner that while they have implemented an electronic means to document training received by child care providers called the Missouri Professional Development ID system (MOPD ID) participation is not mandatory.

CHALLENGES AND BARRIERS TO BOARD SUCCESS

- Lack of adequate administrative support
 - 1.5 FTE was proposed by DED when SBRFB was created under Governor Holden. While authorized by statute several years ago, the only appropriation (2013) was line item vetoed.
 - In the early years, DED provided about 1/3 clerical FTE. This enabled SBRFB to establish basic work processes to support the work of the board to take comments from small businesses, host hearings, review some proposed regulations, and publish an annual report.

- Over the years the support has been less and less, to the point the board could not fulfill most of its duties, including publishing an annual report for the years 2013 and 2014.
- Currently, the board is functioning almost solely on board member volunteer hours, with admin support in the form of meeting notices/minutes/re-establishing notification and tracking some data.
- For full explanation of the duties of the full time, analytical position and the .5 admin support position, please refer to the **Appendix B** of this report. This spells out in detail the level that this Board could and should be functioning.
- Missing Board documents and archives: The SBRFB archives are missing in large part – virtually all of the electronic files are missing; we have located some boxes of hard copies.
- Agency personnel turnover: This is always an issue, but when it is coupled with a lack of internal processes for passing on current work, and not adhering to standard archiving procedures, it is devastating to this Board. It also undermines the many volunteer hours the Board members have put in over the years, some sacrificing their own income for the betterment of all small businesses in MO.
- Inept board leadership: Problems within the board itself caused it to meet irregularly, and for a time not at all. The board has elected new leadership and is in the process of reorganizing.
- Ongoing board vacancies: These are due to appointments not being made. Over time, this also undermines the effectiveness of any board, and certainly the SBRFB. Quorum is based on the total number of board seats, vacant or filled. Therefore, when vacancies exist, it makes it very hard for boards to function properly.
 - As a handy reference, the Board is providing, in **Appendix C**, a document with the criteria for appointments to this board.

SBRFB PLANS FOR FY2016

- Re-create internal processes that have been lost, to track data and support the work of the board
- Continue search for missing documents in archives
- Re-establish consistent review of proposed rules and regulations, those with small business impact statements
- Create new processes for handling review of the first Periodic Review group
- Finish updating agency training materials
- Attempt to fill vacant seats by working with those charged with making appointments
- Try again for funding for 1.5 FTE

STATE AGENCY EVALUATIONS FY2015

In fulfilling its duties outlined in 536.310 RSMo, the Board shall provide an evaluation report to the governor and the general assembly. The SBRFB is charged with tracking and providing results of agency compliance with SBRFB efforts. Agencies working with the SBRFB will ultimately result in higher compliance and fewer complaints from small business owners. The Board has worked to build good working relationship with the state agencies. We will continue to provide ongoing communication to the agencies regarding expectations, criteria, and training.

Normally the agency evaluations are presented in a table with a grade, based on the data collected during the prior fiscal year. Due to circumstances described above, no agency evaluations were possible for FY2013-FY2015 due to lack of data.

New for this year is the request for agencies to provide written narratives in answer to several questions. These were requested via the designated agency liaison to the SBRFB. The questions are intended to help the SBRFB understand agency progress and activities that are related to small business outreach and inclusion. It is also intended as a way for the agency to highlight their successes, and communicate with the Board about challenges they experience.

The questions were:

- Example(s) of how your agency successfully reached out to small business for their input and reaction to rules being written and considered.
- Examples can include reaching out to associations that represent small businesses, and we are most interested in communications directly to the business owners.
- Cite how this outreach resulted in changing or adjusting a rule or regulation based on input from the affected audience.
- Example of helping small business owners comply with regulations rather than forcing fines or other punitive measures.
- Challenges you are facing in meeting these objectives.

All but one agency responded, and most responses were thorough. Excerpts from the responding agencies are below, most were edited for space.

Office of Administration

A large part of the Office of Administration's interaction with small business this year was related to the state's Minority and Women's business Enterprise Program. OA, as well as the contractor hired to perform the study, reached out to small businesses before, during, and after the 2014 Disparity study. The study identifies the availability and utilization of minority and women-owned businesses, and they tend to be small businesses. The publication of the disparity study, and the subsequent Executive Orders, no. 15-06 and no. 14-07, require promulgation of new and revised regulations to appropriately implement these new initiatives. A new Oversight Review Committee was created, and is populated by representatives of small business owners, small business associations, state agencies, legislators, institutions of higher education, and non-for-profits organizations. OA is implementing a new eProcurement system that streamlines bidding and contract awards, making it easier for all small

businesses to compete. OA attends numerous vendor fairs, has prepared vendor manuals, answers questions by business owners about doing business with the state, and directs small businesses for further assistance by Missouri Professional Technical Assistance Center.

Department of Agriculture – no response

Department of Conservation

The Missouri Department of Conservation routinely engages stakeholder groups and partners, including small businesses, throughout its rulemaking process. A recent example of Department engagement with small businesses involves Chronic Wasting Disease (CWD). With the discovery of CWD in the state's deer herd, the Department has been working to implement regulations to manage and contain the disease. The Department recently considered a proposal to ban transportation of deer carcasses from CWD management zones in order to reduce the risk of disease transmission. Department staff specifically engaged licensed meat processors and taxidermists to identify potential implications of such a regulation upon their business. Processors and taxidermists received personal letters of invitation to attend scheduled meetings held around the state, where they would receive information regarding the proposal and have access to Department staff for one-on-one discussions. Attendance at those meetings was good and the dialog was informative. Given concerns expressed by this group of small business owners, the Department is delaying consideration of this regulation until all identified issues can be adequately addressed or resolved.

Department of Corrections

The Department of Corrections consists of four separate divisions including the Division of Probation and Parole (supervision of over 64,000 offenders in the community), the Division of Adult Institutions (21 institutions with over 32,000 inmates), the Division of Rehabilitative Services (treatment, medical and mental health care), and the Division of Human Services (training, personnel, general services, contracts, and fiscal). The liaison to the SBRFB for the Department tasked each division to search for rules or department policy that may regulate or impact small business. Although we contract with businesses throughout Missouri, the Department does not regulate small business. The majority of contracts are secured through the Office of Administration. Through internal research it was revealed that no rules or policies appear to regulate or impact small business in Missouri.

Department of Economic Development

The Missouri Department of Economic Development has over 50 programs that aim to bolster Missouri businesses and communities. Most of the participants in these programs are small businesses. DED business growth programs help businesses hiring as few as two people. For example, through its Business and Community Services division has enabled 230 Missouri businesses to expand or retain employees. Many of the small business applicants for DED's services do not have the resources to pay advisors to assist them with the application process like most large businesses. DED employs six business development specialists who travel extensively throughout the state meeting with communities,

groups, organizations and particularly with businesses. The primary focus of the specialists is to assist the companies with the application and process of DED incentives, but they also provide referrals to other program of benefit to small businesses. DED provides funding for incubators for small businesses in high-tech fields, and has pioneered the concept of Innovation Campuses, where high schools, colleges, and businesses work together to create curriculums to educate students faster and better to produce skilled workers for local businesses.

Public Service Commission

The Public Service Commission has implemented an informal process using workshops to collect written and oral comments from interested stakeholders before filing a proposed rulemaking to start the formal, statutorily required, rulemaking process. The informal process is open to the public and stakeholders of all sizes frequently take part. The informal process makes the Commission aware of the concerns of the public and allows it to revise its rules to take into account those concerns, without being restricted by the tight timeframes imposed by the statute. The informal process has been very helpful in drafting rules that are acceptable to all stakeholders, large and small.

Department of Elementary and Secondary Education

DESE usually doesn't have rules that impact small business, but when a proposed rule does or could cause an additional cost or economic impact we reach out to the small businesses that might be impacted for input. The most common input that we get from small business regarding our rules are public comments during the rule making process. We are sensitive to comments from the public and re-examine our rule and sometimes our fiscal notes as a result of this additional input. We seldom do direct communication with business owners but do post information on our website (www.dese.mo.gov) when we believe the agency is doing something that might impact small business owners. Examples include DESE Model Curriculum (How to Start and Operate a Small Business and Entrepreneurs), DESE Administrative Rules, Related Links and Connections. We have implemented or modified rules to allow small business owners time to comply with rules that would impact them due to a change in our regulations for school districts.

Department of Higher Education

DHE formed a steering committee to guide its recent statewide planning effort culminating in a draft "Blueprint for Higher Education." The steering committee included business leaders from various sectors. Midway through the tour of public hearings, however, DHE recognized a lack of small business leaders. We requested the SBRFB's assistance in identifying small business leaders who might be able to spend a couple days engaging in workshop discussions to help craft, and review drafts of, Missouri's higher education plan. The SBRFB identified an excellent candidate, and DHE arranged for her involvement. By all accounts she was a discussion leader and made outstanding contributions to the steering committee's deliberations. We expect to leverage the SBRFB's connections in future endeavors.

Department of Health and Senior Services

An example of small business inclusion: The Department of Health and Senior Services' Section for Long-Term Care Regulation (SLCR) recently updated the adult day care rules. SLCR routinely invites participation by long-term care association stakeholders any time a rule affecting them is open. These meetings were held on a bi-weekly basis and included representatives of numerous long-term care associations. Participants met with SLCR staff for a series of meetings to draft a revised regulation that would clearly explain compliance measures, limit negative effects on small businesses, and protect the rights of adult day care recipients. After each meeting, participants were forwarded the draft revised rule based on meeting input/discussion and given the opportunity again to review and comment. Through these efforts, SLCR was able to clarify issues and/or misunderstandings regarding regulation implementation, identify areas or issues that needed additional work or adjustment, and help small businesses become compliant with the revised regulations. If a facility claims that a regulation imposes an undue hardship on it, a (short term) exception to the rule can be requested for review by SLCR.

Department of Insurance, Financial Institutions, and Professional Registration

The Department of Insurance, Financial Institutions and Professional Registration works with business, large and small, and various associations when drafting and promulgating regulations. Frequently, the various boards within the department that propose rules are comprised of individuals who own, run, or are employed by small businesses or the associations that advocate for them. The genesis of these proposed rules sometimes comes from the board members' professional experience. Some recent examples of department efforts include working directly with a SBRFB member on questions regarding a proposed rule this year; reaching out to those businesses impacted by the proposed rule and included the input in the proposed rule draft; and we are currently working on a proposed rule amendment that would remove several form requirements and streamline the continuing education process for insurance agents. Some of the ideas from the rule came directly from industry representatives who represent small business.

Department of Labor and Industrial Relations

The Department of Labor and Industrial Relations is cognizant of the potential impact of its activities on businesses of all sizes. It examines each proposed change to its regulations for its impact on small business. The Department works with individual businesses to help them understand and comply with the labor laws it administers and the regulations that are applicable. All of our Divisions are always prepared to provide training to businesses that request it. The Division of Labor Standards provides outreach and education to businesses and public bodies across the state in an effort to reduce wage complaints and violations. The Division's On-Site Program also provides free mock OSHA-type inspections for small employers in high hazard industries. Our safety and health consultants assist businesses in making their workplace safer and helping avoid costly OSHA fines. The Division of Employment Security is currently conducting presentations and outreach for the Shared Work Program, an alternative to layoffs for employers faced with a reduction in available work. The Division also

provides general information as it relates to unemployment tax, properly classifying employees and other employment security matters.

Department of Mental Health

When working on new rules and amendment, DMH generally engages business partners with whom we contract and get their input from the beginning. Having conversations with the contractors – inviting them to the table to assist with drafting of new rules and amendments is critical. If the state agency does not get that input early in the process, it is difficult to reach consensus if there are disagreements later. DMH typically reaches out to specific trade associations to ensure input from small businesses, and we also provide email alerts for those who sign up. We have recently completed an extensive process that involved workgroups to assist in drafting rule amendments, and many revisions were made before the draft amendments were posted for informal review by a wider group of stakeholders. While we strive to offer support to the 800+ provider agencies statewide by providing consistent guidance and feedback regarding provider performance and regulatory requirements, the site survey process itself can be seen as a negative process rather than a collaborative process. We have attempted to overcome these issues by centralizing many internal processes and strengthening collaboration with provider associations. We have worked hard during the past year to educate certified providers on a new survey instrument implemented in 2015, which ensures all providers are reviewed by the same set of standards, greatly increasing owners' ability to comply with regulations.

Department of Natural Resources

The Department of Natural Resources routinely engages with the public in its rulemaking activities through mechanisms such as its forums, commissions, and website. The department recently filed a proposed rulemaking to revise the fee structure for construction permits issued by the department's Air Pollution Control Program. In developing the revised rule text and fee structure, the department held a series of stakeholder meetings with industry representatives, including the Missouri Limestone Producers Association, whose small business members would be impacted by the fee increase. The final result was a 50% reduction in the proposed higher fee for construction permit reviews. In addition, the department wants to help small businesses better understand the requirements of their environmental regulations and avoid future violations of those permits that could result in fines. Therefore, in 2014, the department began offering compliance assistance visits (CAVs) to those regulated by the department. CAVs assist with understanding regulatory requirements, help with achieving and maintaining compliance, and provide a continuing resource for technical assistance. These voluntary visits also provide small business owners a good opportunity to ask questions about permits or other environmental requirements.

Department of Public Safety

DPS strives to work with small business when undertaking regulatory programs that affect those small businesses. The Division of Fire Safety, Alcohol and Tobacco Control, The Missouri State Highway Patrol and any other of our divisions reach out to educate small businesses about the regulations that

those Divisions are charged with enforcing. ATC provides training to retailers about the rules relating to sales of alcohol and also those controlling the sale of tobacco products. Fire Safety conducts regular training to those affected by the regulations applying to many of the inspection programs they conduct, including elevators, boilers, amusement rides, and the fire safety inspections for facilities that care for children, the elderly and the disabled. MSHP conducts training for motor vehicle inspectors, licensed by MSHP. The Department also tries to involve representatives from small business groups that are affected by the regulations enacted by it. Most of the regulations enacted by DPS are focused on law enforcement and public entities.

Department of Revenue

The Department of Revenue considers any comments received from small businesses during the normal rulemaking process. Proposed rules and amendments are sent out to tax professionals and taxpayers through Listserv on the department's website. For example, the Department received comments on two rules posted regarding sales and use tax. A tax professional for a business in Southeast Missouri submitted a comment regarding unclear language and suggested that some terms could be defined to clarify meaning. Two comments were received on another proposed rule, both suggesting ways the rule that could be more transparent. Both proposed rules were changed as a result of comments received through this process. The Department also offers an option for a taxpayer to ask questions about the tax treatment the taxpayer's specific situation. This information is binding on the Department for the taxpayer or business requesting the ruling for three years from the date of the ruling. These rulings can also provide guidance to other taxpayers and so are published on the Department's website. To increase understanding of implementation and enforcement, the Department also meets with interested organizations on various issues particularly with respect to new legislation.

Department of Social Services

The Department of Social Services (DSS) vets its draft regulations with stakeholders before filing them. To better streamline this process, DSS is currently implementing an online survey tool to solicit input, with special emphasis on tracking small business stakeholders. DSS has a number of examples of circumstances in which it worked with small businesses over the year: With assistance from Missouri Health Care Association (membership of all sizes facility owners and operators) DSS crafted improvements that will more accurately determine reimbursements to the facility. Working with private adoption agencies and private attorneys, DSS made adjustments to forms and terminology for user clarity. Child care providers gave feedback on proposed additional training requirements that were program-specific for subsidy payments, but were potentially overlapping with DHSS; coordination between agencies is the outcome. Significant inter-agency communication was fostered by DSS regarding the Electronic Visit Verification regulations, which collecting over 100 pages of questions regarding telephony directly from business owners. After answering the questions directly, DSS passed them along to DHSS to consider when drafting its rule. DSS is charged with enforcement, and has created training materials to ensure compliance by the providers. (This agency provided 3 more specific and noteworthy examples.)

Department of Transportation

Missouri Department of Transportation (MoDOT) holds dozens of free educational outreach programs that help small businesses learn and comply with regulations. MoDOT has compiled extensive resources on its website, and also trains in the use of it to conduct business 24/7. Examples of reaching out to small business for their input to proposed rules are: Several small businesses in the household goods moving industry lobbied for and gained passage of Missouri legislation to de-regulate the industry. MoDOT held multiple working sessions with the small businesses and worked hand-in-hand to write the statutorily required new rules together. In 2015, MoDOT was required to amend a rule pursuant to the International Registration Plan (IRP). The amended rule impacted large bus companies primarily, but MoDOT implemented a communication plan and discussed the proposed rule change with associations made up of small businesses. We personally met with several small private carriers to communicate the proposed rule's impact, offer alternative compliance options, and we mailed over 500 letters directly to individual small companies to educate them and offer assistance and answer questions. MoDOT's compliance enforcement group has the authority and frequently offers correction action plans, evidence of compliance, and educational training to small businesses in lieu of fines for non-compliance of certain regulations. MoDOT also has an extensive vendor program for disadvantaged small businesses.

STATE AGENCY EVALUATIONS FY2016

In FY2016, we will return to the grading system as used in all prior annual reports. We are currently once again tracking the necessary data to be able to accurately and fairly report. Each step is straightforward, and this is not a 'gotcha' type of process. For the new agency liaisons, as well as the more seasoned ones, we encourage ongoing communication with the SBRFB for clarifications and questions throughout the year.

Criteria for FY2016

Providing feedback to the agencies is of prime importance, as is agency cooperation and communication back to the board.

The SBRFB has created criteria and ongoing training for the agencies so that they have a clear understanding of what the board is looking for. As we progress, the criteria are updated annually in keeping with the work of the Board as well as the agencies.

The criteria used in making evaluations are listed at the top of each column in the evaluation table. Evaluation criteria for FY2016 are clarified below:

- A. The column 'Respond to Small Business Comments in a Timely Manner' refers to the initial comment in which the agency (by statute) has 60 days to respond. It also refers to subsequent

letters that frequently occur back and forth as the Board works through an issue. The agency has 30 days to respond to these letters.

- B. The column 'Provide Complete Response to Small Business Comment' measures the *quality of content* in the initial agency response, as well as subsequent response letters.
- C. The column 'Agency Responsiveness to SBRFB Requests' includes all other communications, usually via email, that the board generates. This would include requests for input, answering a questionnaire, and general information.
- D. The column 'Participate in Regulatory Fairness Meetings' refers to meeting attendance by the agency liaison.
- E. The column 'Participate in Regulatory Fairness Public Hearings' refers to the agency providing decision-makers and knowledgeable personnel to answer questions brought in front of the Board at the public hearings.
- F. This column 'Train agency staff on SBRFB Programs,' refers to the board liaison taking training and then communicating what they learned with other agency personnel.
- G. The column, 'Complete Small Business Impact Statement' – only tracks whether the Impact Statement was completed or not. .
- H. Add a column called 'Impact Statement Quality of Content' that evaluates *the quality of content* in the Impact Statement.
- I. The column 'Adherence to Non-Retaliation Policy.' This is a place to track the rare, but disturbing, accusations of agency retaliation against a small business owner before or after their small business provides comments or brings an issue before the SBRFB.
- J. Regarding the column 'Notify SBRFB of Small Business Comments from Public' This is for the agency to notify the SBRFB about small business comments that come directly to the agency from the public and therefore do not otherwise come in front of the Board.

APPENDIX DOCUMENT A: Periodic Review Explanation Sheet (Developed by the SBRFB for Outreach to Small Business Owners in MO)

Alert to All Small Business Owners in MO:

This is your chance to comment on state rules and regulations that have
plagued, puzzled, or baffled you for years.

Something brand new begins this July 1, 2015. Recent legislation now requires state agencies to review *every rule and regulation on the books*, for the purpose of *justifying their continued existence or modification*. As part of this process the public is given a chance to provide comments about how existing rules and regulations negatively or positively affect them. This means that YOU as a business owner have a chance to make a difference for your company and your industry – nobody knows better than you what changes need to be made.

Called a Periodic Review, the plan is on a 5-year rolling schedule, each year requiring a specific group of agencies to perform the review. The first group includes all regulations in Administration, Agriculture, Conservation, Economic Development, Elementary and Secondary Education, and Higher Education.

The public comment period is **ONLY for 60 DAYS**, starting with a July 1, 2015 announcement in the state register and ending Aug. 31, 2015. Any individual or company can comment on any specific rule in these departments, made directly to the contact list below:

Title 1 - Office of Administration

Kristen Paulsmeyer
P.O. Box 809
Jefferson City, MO 65102
Kristen.Paulsmeyer@oa.mo.gov

Title 2 - Department of Agriculture

Amber Buckland
1616 Missouri Blvd.
Jefferson City, MO 65109
Amber.Buckland@mda.mo.gov

Title 3 - Department of Conservation

Denise Bateman
P.O. Box 180
Jefferson City, MO 65102
Denise.Bateman@mdc.mo.gov

Title 4 - Department of Economic Development

Nathan Nickolaus, General Counsel
(HST-680)
PO Box 1157
Jefferson City, MO 65102
Nathan.Nickolaus@ded.mo.gov

Title 5 - Department of Elementary and Secondary Education

Attn: Barbara LePage
PO Box 480
Jefferson City, MO 65102-0480
DESE.AdminRules@dese.mo.gov

Title 6 - Department of Higher Education

Jeremy Knee
205 Jefferson Street, 11th Floor
PO Box 1469
Jefferson City, MO 65102
Jeremy.Knee@dhe.mo.gov

How to comment on a rule: Use the emails provided above to send your comment directly to the agency. Your comment must include your name, contact information, and explanation about your experience with a rule including any suggestions for improvement. You must also identify the specific rule number your comment relates to, as it appears in the Code of State Regulations,

<http://www.sos.mo.gov/adrules/csr/csr.asp>. For help in finding the specific rule number to cite, 1) use the online search feature for the agency, 2) contact the agency directly and ask for their help, 3) call the Secretary of State and ask for their help, 573-751-4936; or 4) ask your industry association or Chamber, their policy person may be able to help.

For more information: Contact Dawn Overbey, the executive assistant for the Small Business Regulatory Fairness Board, at 573-751-4770. When you send a comment to the agency, it would be a good idea to also cc: dawn.overbey@ded.mo.gov.

It will be worth your time to provide comments. For the first time in history, we have the opportunity to comment on the rules. Pass this information along to others, the time is short!

About the report:

Per RSMO 536.175.1, each agency with rules being reviewed shall prepare a report containing the results of its periodic rule review. The report will also include the public comments received. The report shall consider and include the following:

- (1) Whether the rule continues to be necessary, taking into consideration the purpose, scope, and intent of the statute under which the rule was adopted;
- (2) Whether the rule is obsolete, taking into consideration the length of time since the rule was modified and the degree to which technology, economic conditions, or other relevant factors have changed in the subject area affected by the rule;
- (3) Whether the rule overlaps, duplicates, or conflicts with other state rules, and to the extent feasible, with federal and local governmental rules;
- (4) Whether a less restrictive, more narrowly tailored, or alternative rule could adequately protect the public or accomplish the same statutory purpose;
- (5) Whether the rule needs amendment or rescission to reduce regulatory burdens on individuals, businesses, or political subdivisions or eliminate unnecessary paperwork;
- (6) Whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference meets the requirements of section [536.031](#);
- (7) For rules that affect small business, the specific public purpose or interest for adopting the rules and any other reasons to justify its continued existence; and
- (8) The nature of the comments received by the agency under subsection 2 of this section, a summary of which shall be attached to the report as an appendix and shall include the agency's responses thereto.

Small Business Regulatory Fairness Board (SBRFB): Duties and Descriptions of the Administrative Support Required

When the positions were proposed by the SBRFB members in 2011, the recommendations were for:

- Full Time analyst who can review the impact statements, agency analysis, small business comments, and work with the agencies to improve their compliance
- Part Time clerical support to keep up with the filings, logging, posting regulatory alerts, and other essential things to track the progress of regulatory fairness in Missouri.
- And, sufficient budget to operate the board, seek public comment, and report as required.

These recommendations were based on the data, comments, and activity we had experienced up to that date. Coincidentally, we discovered that this was exactly the level of support DED had estimated when the first SBRFB bill was proposed under Gov. Holden.

The full-time position is intended to be analytical, not clerical.

1. The analyst would administer the work of the SBRFB, providing consistency and organizational memory.
 - a. Over time, as SBRFB members, agency staff turnover, and administrations change. Note that other states have reported the same challenges with turnover.
 - b. The analyst would administer the working of the SBRFB, setting up meetings and hearings, working with small businesses, their associations, agency liaisons, and others as appropriate.
 - c. Ensure meeting minutes are developed, distributed, and retained.
 - d. The SBRFB members' role is to provide small business expertise, make judgement calls regarding all facets of the board's work, and fulfill the reason for its existence: to make MO friendly to small business by being proactive with the agencies during rule making and implementation, and to be the sole watchdog and resource for the interests of small business.
 - e. The analyst must track and retain all of the meetings, submissions, communications, and agency responses. This documents the work of the board.
2. The analyst would review the proposed regulations that come to us with Small Business Impact Statements (SBIS)
 - a. Review helps ensure the SBIS reasonable reflects the impact the proposed rule on small business.
 - b. Review includes checking that impacted small businesses were appropriately included in promulgation, work with the agency liaisons, JCAR, and others to ensure the statutory requirements are met to minimize the impact on small businesses.

- c. Back in 2011, agencies were promulgating regulations at a rapid rate. The SBRFB had received over 360 proposed regulations that fiscal year including 145 in the first quarter of 2011. The rate of regulation change continues today.
 - d. It takes considerable time to read, review, and analyze the SBIS to determine if the agency really did meet the statutory requirements of the law
 - e. SBRFB members own/run small businesses. None have the time to review even a portion of the proposed rules.
 - f. The analyst should review these rules sorting out those that need SBRFB review.
 - g. The SBRFB members' role is to be called upon for opinions, input, help in finding targeted small business owners who are in specific industries (that relates to one of the rules) for their input, discussion on feedback to agencies who have not provided complete or inadequate SBIS.
 - h. The analyst must track and date all of the submissions, communications, and agency responses for the purpose of having agency data with which to do the mandated annual agency evaluations. This also documents the work of the board.
3. The analyst would review the state register to catch rules that did not come to us and therefore had no SBIS.
- a. Rules that have an impact on small business need to have a SBIS. Some agencies have bypassed the SBRFB by stating that there is no impact to small businesses when in fact there is.
 - b. The only way to find these is to review the state register for such rules that affect small businesses.
 - c. Obviously, SBRFB members have very little time for this. Yet, nearly every time one of us has been able to review the state register, there have been rules slipping through that indeed did affect small businesses. Not every agency, not every time.
 - d. The analyst should first review these rules sorting out those that need further SBRFB review.
 - e. We have found that frequently the agency simply did not understand how a certain rule could have any impact on small business, and when it is explained from our point of view they see it. From that point on we hope the agency has a new perspective and we then receive SBIS on future rules – that is the goal.
 - f. The analyst would work with the agency liaison, JCAR, and others to ensure that the small business impact is minimized and statutory requirements are met. This could mean a rule is withdrawn until impacted small businesses have been consulted.
 - g. The SBRFB members' role is to be called upon for opinions, input, help in finding small business owners who are in impacted industries, and discussion on feedback to agencies who have not provided complete or inadequate SBIS.
 - h. The analyst must ensure that data, on all submissions, communications, and agency responses, is tracked to ensure timely agency responses and to prepare the mandated annual agency evaluations. This also documents the work of the board.
4. The analyst is responsible for shepherding small business comments through the process.
- a. When a small business owner submits a comment to the SBRFB, it begins a specific process that requires the board to communicate with the agency, the agency by statute

must respond, and so on until resolution, impasse, or withdrawal. This process can take many months.

- b. The analyst would engage the agency and small business, facilitate discussion, and help the stakeholders reach resolution. In the past, just getting them talking has resolved many an issue.
 - c. Given the press of duties, the SBRFB can do little more than notify the agency and wait for the parties to report back in the future.
 - d. The lack of action, on prior comments, results in nearly no small business willing to trust SBRFB with their issues. Of course, this is the intent from those who have no desire to comply.
 - e. The SBRFB members' role is to be called upon for open public meeting in which comments are made, interviewing the representative from the affected agency, have direct discussions with the small business owner, provide small business expertise to the agencies, the small business owner who made the comment, and to the analyst.
5. The analyst would be a resource for and conduct outreach to state agencies. While many agencies have gained some understanding of their responsibilities under the SBRFB, some opportunities remain where individuals, boards, and commissions simply think they know best without small business input.
- a. The analyst needs to facilitate updating / revising /creating new training materials for the agencies. The current training program is completely inadequate. It dealt with only one part of the SBRFB statute. A SBRFB member is working to update the training, but limited time is inhibiting progress.
 - b. Once materials are updated, the analyst would integrate it into the state system, and ensure the training is available for agency personnel.
 - c. The analyst coordinates with the agency liaison to ensure agency regulators and investigators attend training sessions at least annually.
 - d. At times, agencies have complained about being able to find impacted small businesses. The analyst would be able to facilitate this. On those occasions when SBRFB members helped, it usually only took two to three phone calls to find affected small businesses.
 - e. The SBRFB members' role is to provide content for updating training materials, be conscious of extending a cooperative hand to agencies; yet, be tough when appropriate.
 - f. The analyst must ensure that data on all of the activity, who attended training and from which agency, when training was offered, and feedback from the agencies back to the board of questions, suggestions, etc. is tracked. The purpose of having agency data with which to do the mandated annual agency evaluations, and this also documents the work of the board.
6. The analyst would be a resource for outreach to the small business community.
- a. The best time to reach out to small business owners is when they are undergoing difficulty with state regulations. Many small business comments can be generated when the SBRFB and support staff discover these problems and contact the affected small businesses and their associations.
 - b. Routine contact or visibility is required so that top-of-mind awareness occurs when issues develop in the future. This could include things such as a notice about the SBRFB – what

- it is, how it helps small businesses – frequently appearing in DED and other department newsletters.
- c. The analyst would develop contacts with key small business associations: to help locate small businesses, to reach out as rules are proposed, and seek input during the periodic reviews.
 - d. The analyst would oversee the reactivation of the regulatory alert system (the clerical staff can handle the day to day), reach out to stakeholders to enlist their subscription, and facilitate resolution of resulting comments on pending rules.
 - e. Updating the SBRFB website content, and ongoing updating of the board roster.
 - f. The SBRFB members' role is to provide ideas and contacts for outreach by the analyst/staff; personally provide outreach to their own spheres of business on a daily basis; be available for presenting about the SBRFB to business associations; oversee and provide website content; monitor the internal progress on reactivation of the regulatory alert system.
 - g. The analyst must ensure that all outreach activity, by staff or board members, is tracked and retained. This documents the work of the board.
7. The analyst would assist in developing the annual report.
- a. The analyst would compile the data above and present to the board, and incorporate the board's agency evaluation judgements into the report.
 - b. The analyst would compose some sections of text, and would get final approval from the board, prior to having it published by the state (pdf and/or print).
 - c. The analyst would disseminate the report to the agencies, legislators, and any other appropriate stakeholder by the end of the calendar year.
 - d. The SBRFB members' role is to help ensure the data is complete and accurate, make judgements about the agencies according to the stated goals and agency training, and publish on time.
8. The analyst would be a key resource for outreach during the rolling periodic review of regulations.
- a. Helping small business owners understand the opportunities the new periodic reviews creates for them, and how to interact. This will require consistent and targeted communications and outreach.
 - b. Help the SBRFB members to develop the internal process to handle the data coming out of the rolling periodic reviews.
 - c. The analyst should review agency submissions sorting out those that need SBRFB review.
 - d. The SBRFB members' role is to provide small business expertise, make judgement calls, and help ensure fairness for all MO small businesses.
 - e. The analyst must ensure all data for the meetings, submissions, communications, and agency responses, is tracked and retained. This documents the work of the board.

MO Small Business Regulatory Fairness Board (SBRFB) Board Member Criteria and Expectations

This document is to be used by the Board and those doing Board appointments as a reference to ensure that Board appointees are a good fit to carry out the work of the Board.

The Board members must be:

- Small business owner – current or former
- Geographic – from all parts of the state, both rural and urban
- Industry – broad and diverse in type of company the Board member owns

The SBRFB is a small but committed board, and it is of utmost importance that the appointee becomes actively involved: responsive to emails, attend Board meetings, participate in conference calls. Outside of the meetings, the members need to be willing spend at least a few hours per month doing the work of the board.

We communicate via email, conference calls, and use online meetings, so the board member must have the ability to participate in this way.

The Board normally meets face-to-face in Jefferson City once or twice per year. Other meetings are held via conference calls, approximately quarterly.

RMS 536.305

1. There is hereby established the "Small Business Regulatory Fairness Board". The department of economic development shall provide staff support for the board.

2. The board shall be composed of nine members appointed in the following manner:

- (1) One member who is the chair of the minority business advocacy commission;
- (2) One member appointed by the president pro tempore of the senate;
- (3) One member appointed by the minority leader of the senate;
- (4) One member appointed by the speaker of the House of Representatives;
- (5) One member appointed by the minority leader of the House of Representatives; and
- (6) Four members appointed by the governor.

3. Each member of the board, except for the public members and the chair of the minority business advocacy commission, shall be a current or former owner or officer of a small business. All members of the board shall represent a variety of small businesses, both rural and urban, and be from a variety of geographical areas of this state, provided that no more than two members shall represent the same type of small business.